

112TH CONGRESS
1ST SESSION

H. R. 1585

To allow States to elect to receive contributions to the Highway Trust Fund in lieu of participating in the Federal-aid highway program or certain public transportation programs.

IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 2011

Mr. LANKFORD introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To allow States to elect to receive contributions to the Highway Trust Fund in lieu of participating in the Federal-aid highway program or certain public transportation programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “State Highway Flexi-
5 bility Act”.

1 **SEC. 2. DIRECT FEDERAL-AID HIGHWAY PROGRAM.**

2 (a) IN GENERAL.—Chapter 1 of title 23, United
3 States Code, is amended by inserting after section 149 the
4 following:

5 **“§ 150. Direct Federal-Aid highway program**

6 “(a) ELECTION BY STATE NOT TO PARTICIPATE.—
7 Notwithstanding any other provision of law, a State may
8 elect not to participate in a Federal program relating to
9 highways, including any Federal highway program under
10 the Safe, Accountable, Flexible, Efficient Transportation
11 Equity Act: A Legacy for Users (Public Law 109–59), this
12 title, or title 49.

13 “(b) DIRECT FEDERAL-AID HIGHWAY PROGRAM.—
14 Beginning in fiscal year 2011, the Secretary shall carry
15 out a direct Federal-aid highway program in accordance
16 with the requirements of this section. Under the program,
17 the Governor or chief executive officer of a State may
18 elect, not fewer than 90 days before the beginning of a
19 fiscal year—

20 “(1) to waive the right of the State to receive
21 amounts apportioned or allocated to it under the
22 Federal-aid highway program for the fiscal year to
23 which the election relates; and

24 “(2) to receive instead the amount determined
25 under subsection (e) for that fiscal year.

26 “(c) STATE RESPONSIBILITY.—

1 “(1) IN GENERAL.—The Governor or chief ex-
2 ecutive officer of a State making an election under
3 subsection (b) shall—

4 “(A) agree to maintain the Interstate Sys-
5 tem in accordance with its current Interstate
6 System program;

7 “(B) submit a plan to the Secretary de-
8 scribing—

9 “(i) the purposes, projects, and uses
10 to which amounts received under the direct
11 Federal-aid highway program will be put;
12 and

13 “(ii) which programmatic require-
14 ments of this title the State elects to con-
15 tinue;

16 “(C) agree to obligate or expend amounts
17 received under the direct Federal-aid highway
18 program exclusively for projects that would be
19 eligible for funding under section 133(b) if the
20 State was not participating in the program; and

21 “(D) agree to report annually to the Sec-
22 retary on the use of amounts received under the
23 direct Federal-aid highway program and to
24 make the report available to the public in an
25 easily accessible format.

1 “(2) NO LIMITATION ON USE OF FUNDS.—Ex-
 2 cept as provided in paragraph (1), the expenditure
 3 or obligation of funds received by a State under the
 4 direct Federal-aid highway program shall not be
 5 subject to regulation under this title (except for this
 6 section), title 49, or any other Federal law.

7 “(3) ELECTION IRREVOCABLE.—An election
 8 under subsection (b) shall be irrevocable during the
 9 applicable fiscal year.

10 “(d) EFFECT ON PRE-EXISTING COMMITMENTS.—
 11 The making of an election under subsection (b) shall not
 12 affect any responsibility or commitment of the State under
 13 this title for any fiscal year with respect to—

14 “(1) a project or program funded under this
 15 title (other than under this section); or

16 “(2) any project or program funded under this
 17 title in any fiscal year for which an election under
 18 subsection (b) is not in effect.

19 “(e) TRANSFERS.—

20 “(1) IN GENERAL.—The amount to be trans-
 21 ferred to a State under the direct Federal-aid high-
 22 way program for a fiscal year shall be the portion
 23 of the taxes appropriated to the Highway Trust
 24 Fund under section 9503 of the Internal Revenue
 25 Code of 1986, other than for the Mass Transit Ac-

1 count, for that fiscal year that is attributable to
2 highway users in that State during that fiscal year,
3 reduced by a pro rata share withheld by the Sec-
4 retary to fund contract authority for programs of
5 the National Highway Traffic Safety Administration
6 and the Federal Motor Carrier Safety Administra-
7 tion.

8 “(2) TRANSFERS.—

9 “(A) IN GENERAL.—Transfers under the
10 program—

11 “(i) shall be made at the same time as
12 deposits to the Highway Trust Fund are
13 made by the Secretary of the Treasury;
14 and

15 “(ii) shall be made on the basis of es-
16 timates by the Secretary, in consultation
17 with the Secretary of the Treasury, based
18 on the most recent data available, and
19 proper adjustments shall be made in
20 amounts subsequently transferred to the
21 extent prior estimates were in excess of, or
22 less than, the amounts required to be
23 transferred.

24 “(B) LIMITATION.—An adjustment under
25 subparagraph (A)(ii) to any transfer may not

1 exceed 5 percent of the transferred amount to
2 which the adjustment relates. If the adjustment
3 required under subparagraph (A)(ii) exceeds
4 that percentage, the excess shall be taken into
5 account in making subsequent adjustments
6 under subparagraph (A)(ii).

7 “(f) APPLICATION WITH OTHER AUTHORITY.—
8 There shall be rescinded or canceled any contract author-
9 ity under this chapter (and any obligation limitation) for
10 a State for a fiscal year for which an election by that State
11 is in effect under subsection (b).

12 “(g) MAINTENANCE OF EFFORT.—

13 “(1) IN GENERAL.—Not later than 30 days
14 after the date on which an amount is distributed to
15 a State or State agency under the State Highway
16 Flexibility Act or an amendment made by that Act,
17 the Governor or chief executive officer of the State
18 shall certify to the Secretary that the State will
19 maintain the effort of the State with regard to State
20 funding for the types of projects that are funded by
21 the amounts.

22 “(2) AMOUNTS.—As part of the certification,
23 the Governor or chief executive officer shall submit
24 to the Secretary a statement identifying the amount
25 of funds the State plans to expend from State

1 sources during the covered period, for the types of
 2 projects that are funded by the amounts.

3 “(h) TREATMENT OF GENERAL REVENUES.—For
 4 purposes of this section, any general revenue funds appro-
 5 priated to the Highway Trust Fund shall be transferred
 6 to a State under the program in the manner described
 7 in subsection (e).”.

8 (b) CONFORMING AMENDMENT.—The analysis for
 9 title 23, United States Code, is amended by inserting after
 10 the item relating to section 149 the following:

“150. Direct Federal-aid highway program.”.

11 **SEC. 3. ALTERNATIVE FUNDING OF PUBLIC TRANSPOR-**
 12 **TATION PROGRAMS.**

13 (a) IN GENERAL.—Chapter 53 of title 49, United
 14 States Code, is amended by adding at the end the fol-
 15 lowing:

16 **“§ 5341. Alternative funding of public transportation**
 17 **programs**

18 “(a) DEFINITIONS.—In this section—

19 “(1) the term ‘alternative funding program’
 20 means the program established under subsection (c);
 21 and

22 “(2) the term ‘covered programs’ means the
 23 programs authorized under—

1 “(A) sections 5305, 5307, 5308, 5309,
2 5310, 5311, 5316, 5317, 5320, 5335, 5339,
3 and 5340 of title 49, United States Code; and

4 “(B) section 3038 of the Federal Transit
5 Act of 1998 (49 U.S.C. 5310 note).

6 “(b) ELECTION BY STATE NOT TO PARTICIPATE.—
7 Notwithstanding any other provision of law, a State may
8 elect not to participate in a Federal program relating to
9 public transportation, including any Federal public trans-
10 portation program under the Safe, Accountable, Flexible,
11 Efficient Transportation Equity Act: A Legacy for Users
12 (Public Law 109–59; 119 Stat. 1144), title 23, or this
13 title.

14 “(c) PUBLIC TRANSPORTATION PROGRAM.—

15 “(1) PROGRAM ESTABLISHED.—Beginning in
16 fiscal year 2011, the Secretary shall carry out an al-
17 ternative funding program under which the Governor
18 or chief executive officer of a State may elect, not
19 fewer than 90 days before the beginning of a fiscal
20 year—

21 “(A) to waive the right of the State to re-
22 ceive amounts apportioned or allocated to it
23 under the covered programs for the fiscal year
24 to which the election relates; and

1 “(B) to receive an amount for that fiscal
2 year that is determined in accordance with sub-
3 section (e).

4 “(2) PROGRAM REQUIREMENTS.—

5 “(A) IN GENERAL.—The Governor or chief
6 executive officer of a State that participates in
7 the alternative funding program shall—

8 “(i) submit a plan to the Secretary
9 describing—

10 “(I) the purposes, projects, and
11 uses to which amounts received under
12 the alternative funding program will
13 be put; and

14 “(II) which programmatic re-
15 quirements of this title the State
16 elects to continue;

17 “(ii) agree to obligate or expend
18 amounts received under the alternative
19 funding program exclusively for projects
20 that would be eligible for funding under
21 the covered programs if the State was not
22 participating in the alternative funding
23 program; and

24 “(iii) submit an annual report to the
25 Secretary on the use of amounts received

1 under the alternative funding program,
2 and to make the report available to the
3 public in an easily accessible format.

4 “(B) NO LIMITATION ON USE OF FUNDS.—

5 Except as provided in subparagraph (A), the
6 expenditure or obligation of funds received by a
7 State under the alternative funding program
8 shall not be subject to the provisions of this
9 title (except for this section), title 23, or any
10 other Federal law.

11 “(3) ELECTION IRREVOCABLE.—An election
12 under paragraph (1) shall be irrevocable during the
13 applicable fiscal year.

14 “(d) EFFECT ON PRE-EXISTING COMMITMENTS.—

15 Participation in the alternative funding program shall not
16 affect any responsibility or commitment of the State under
17 this title for any fiscal year with respect to—

18 “(1) a project or program funded under this
19 title (other than under this section); or

20 “(2) any project or program funded under this
21 title in any fiscal year for which the State elects not
22 to participate in the alternative funding program.

23 “(e) TRANSFERS.—

24 “(1) IN GENERAL.—The amount to be trans-
25 ferred to a State under the alternative funding pro-

1 gram for a fiscal year shall be the portion of the
2 taxes transferred to the Mass Transit Account of the
3 Highway Trust Fund under section 9503(e) of the
4 Internal Revenue Code of 1986, for that fiscal year,
5 that is attributable to highway users in that State
6 during that fiscal year.

7 “(2) TRANSFERS.—

8 “(A) IN GENERAL.—Transfers under the
9 program—

10 “(i) shall be made at the same time as
11 transfers to the Mass Transit Account of
12 the Highway Trust Fund are made by the
13 Secretary of the Treasury; and

14 “(ii) shall be made on the basis of es-
15 timates by the Secretary, in consultation
16 with the Secretary of the Treasury, based
17 on the most recent data available, and
18 proper adjustments shall be made in
19 amounts subsequently transferred, to the
20 extent prior estimates were in excess of, or
21 less than, the amounts required to be
22 transferred.

23 “(B) LIMITATION.—An adjustment under
24 subparagraph (A)(ii) to any transfer may not
25 exceed 5 percent of the transferred amount to

1 which the adjustment relates. If the adjustment
2 required under subparagraph (A)(ii) exceeds
3 that percentage, the excess shall be taken into
4 account in making subsequent adjustments
5 under subparagraph (A)(ii).

6 “(f) CONTRACT AUTHORITY.—There shall be re-
7 scinded or canceled any contract authority under this
8 chapter (and any obligation limitation) for a State for a
9 fiscal year for which the State elects to participate in the
10 alternative funding program.

11 “(g) MAINTENANCE OF EFFORT.—

12 “(1) IN GENERAL.—Not later than 30 days
13 after the date on which an amount is distributed to
14 a State or State agency under the State Highway
15 Flexibility Act or an amendment made by that Act,
16 the Governor or chief executive officer of the State
17 shall certify to the Secretary that the State will
18 maintain the effort of the State with regard to State
19 funding for the types of projects that are funded by
20 the amounts.

21 “(2) AMOUNTS.—The certification under para-
22 graph (1) shall include a statement identifying the
23 amount of funds the State plans to expend from
24 State sources for projects funded under the alter-
25 native funding program, during the fiscal year for

1 which the State elects to participate in the alter-
2 native funding program.

3 “(h) TREATMENT OF GENERAL REVENUES.—For
4 purposes of this section, any general revenue funds appro-
5 priated to the Highway Trust Fund shall be transferred
6 to a State under the program in the manner described
7 in subsection (e).”.

8 (b) CONFORMING AMENDMENT.—The analysis for
9 title 49, United States Code, is amended by inserting after
10 the item relating to section 5340 the following:

“5341. Alternative funding of public transportation programs.”.

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